

United States
Circuit Court of Appeals

For the Sixth Circuit.

DANG NAM,

Appellant.

vs.

JAMES B. BRYAN, District Director of Immigration,
Port of Honolulu, Territory of Hawaii,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Territory of Hawaii.

FILED
DEC 7 - 1933
PAUL P. O'BRIEN
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

DANG NAM,

Appellant,

vs.

JAMES B. BRYAN, District Director of Immigration,
Port of Honolulu, Territory of Hawaii,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

For the Petitioner, DANG NAM

E. J. BOTTS, ESQ.,

Stangenwald Building, Honolulu, T. H.

For the Respondent, JAMES B. BRYAN,

District Director of Immigration,

Port of Honolulu, Territory of Hawaii,

SANFORD B. D. WOOD, ESQ.,

United States Attorney,

Federal Building, Honolulu,

Territory of Hawaii.

JOHN ALBERT MATTHEWMAN, ESQ.,

Assistant United States Attorney,

Federal Building, Honolulu,

Territory of Hawaii. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the United States District Court for the
Territory of Hawaii

H. C. No. 252

In the Matter of the Application of
DANG NAM
for a Writ of Habeas Corpus.

CLERK'S STATEMENT

Time of Commencing Suit:

October 3, 1932

Petition filed

Names of Original Parties:

Dang Nam, Petitioner

James B. Bryan, Esq., Director of Immigra-
tion for the Port of Honolulu, Territory of
Hawaii, Respondent

Dates of Filing Pleadings

October 3, 1932

Petition

Writ of Habeas Corpus
Issued

October 17, 1932

Return to Writ of Habeas
Corpus

October 28, 1932

Traverse to Return

Date of Filing Decision and Judgment:

December 1, 1932

Decision

December 3, 1932

Judgment

Times When Proceedings Were Had:

October 7, 1932

Continuance

November 22, 1932

Continuance

November 23, 1932

Trial

November 25, 1932

Further Trial [2]

Proceedings in the Above Entitled Matter were had before the Honorable EDWARD K. MASSEE, District Judge.

Dates of Filing Appeal Documents:

Petition for Appeal	December 21, 1932
Assignment of Errors	December 21, 1932
Order Allowing Appeal	December 21, 1932
Citation on Appeal issued	December 21, 1932
Cost Bond	December 24, 1932
Praeceptum for Transcript	December 22, 1932

CERTIFICATE OF CLERK AS TO THE
ABOVE STATEMENT

The United States of America,
Territory of Hawaii.—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties, the several dates when the respective pleadings were filed; the time when proceedings were had and the name of the Judge presiding; the date of the filing of the decision and judgment and date when appeal documents were filed and issued in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 9th day of February A. D. 1933.

[Seal] WM. F. THOMPSON, JR.
Clerk, U. S. District Court,
Territory of Hawaii. [3]

[Title of Court and Cause.]

PETITION

To the Honorable, the Presiding Judge in the Above
Entitled Court:

The petition of DANG NAM, above named, for a writ of habeas corpus, respectfully shows and presents:

I.

That at all times herein mentioned, James B. Bryan has been and still is the duly appointed and acting District Director of Immigration in and for the District and Territory of Hawaii.

II.

That petitioner is a member of the Chinese race and is now and has been for thirty-six years last past a resident of the Territory of Hawaii engaged in business and maintaining a home at Wailuku, Island of Maui.

III.

That on or about the 24th day of January, 1932, petitioner was arrested for a narcotic violation and thereafter, towit the 12th day of February, 1932, the said petitioner was indicted by the United States Grand Jury in and for the District and Territory of Hawaii upon said alleged offense, a copy of which said indictment is hereto annexed and made a part hereof and marked Exhibit "A". [5]

IV.

That thereafter and on towit, the 18th day of April, 1932, the petitioner entered a plea of guilty

to the said indictment before the Honorable E. K. Masee, Judge of the United States District Court in and for the District and Territory of Hawaii, and the said Judge at said time sentenced the petitioner to Imprisonment in the City and County Jail in Honolulu for a term of six months on the second count of said indictment and placed petitioner on probation for a period of three years on the first count of said indictment.

V.

That the plea of guilty entered, as aforesaid, by the petitioner was made pursuant to an arrangement or stipulation with a representative of the United States District Attorney's Office that a recommendation be made by said office to the Court against the deportation of petitioner and conformable to said understanding or stipulation, Willson C. Moore, Esquire, a member of the staff of the United States District Attorney's office, made such recommendation to the Court and the Honorable E. K. Masee, Judge of said Court aforesaid, at the time of imposing sentence recommended and directed, as authorized and provided in Section 155, Title VIII, United States Code, that petitioner be not deported.

VI.

That thereafter, towit, on the 2nd day of May, 1932, a mittimus issued pursuant to the sentence of the court, aforesaid, and the petitioner was committed to and lodged in the City and County Jail

where he has since remained in the execution of the sentence aforesaid. [6]

VII.

That notwithstanding the order and recommendation against deportation, as aforesaid, the Secretary of Labor did, on or about the 29th day of June, 1932, issue a warrant looking to the deportation of the said petitioner because of his sentence, as aforesaid, on said indictment and thereafter did, on theday of September, 1932, order and direct James B. Bryan, Esquire, District Director of Immigration at the Port of Honolulu, to deport petitioner upon the expiration of said *said* sentence in the City and County Jail, imposed upon him as aforesaid, and the said James B. Bryan, Esquire, will, unless restrained and prevented by this Honorable Court, deport the said petitioner.

VIII.

That your petitioner is now imprisoned and restrained of his liberty in the Detention Quarters of the Immigration Station, Honolulu aforesaid, by the said James B. Bryan, Esquire, for the purpose of deporting petitioner to the Republic of China.

IX.

That petitioner is not being held or restrained of his liberty under any order, judgment or process of any court, nor is he being held or restrained of his liberty otherwise than as above set forth.

WHEREFORE, TO BE RELIEVED OF SAID UNLAWFUL IMPRISONMENT AND THREATENED DEPORTATION, petitioner prays that a writ of habeas corpus issue herein directed to the said James B. Bryan, Esquire, Immigration Director as aforesaid, ordering and directing him to have and produce the body of petitioner before this Honorable Court, to do, submit to and receive what the law may require in the premises.

Dated at Honolulu, this 3rd day of October, A. D. 1932.

(s) DANG NAM

Petitioner [7]

United States of America,
Territory of Hawaii.—ss.

Dang Nam being first duly sworn, on oath, deposes and says: That he is the petitioner above named; that he has heard read and explained to him the foregoing Petition and knows the contents thereof and that the same is true.

(s) DANG NAM

Subscribed and sworn to before me this 3rd day of October, 1932.

[Seal]

(s) GLADYS K. BENT.

Notary Public, First Judicial Circuit, Territory of Hawaii. [8]

EXHIBIT "A"

In the United States District Court for the
Territory of Hawaii.

October Term 1931

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANG NAM,

Defendant.

INDICTMENT.

Count I.

Violation of the Act of February 9, 1909, as amended by the Act approved January 17, 1914, as amended by the Act approved May 26, 1922 and known as THE NARCOTIC DRUGS IMPORT AND EXPORT ACT.

Count II.

Violation of Section 1 of the Act approved December 17, 1914, as amended by Section 1006 of the Revenue Act of 1918, reenacted by Section 1005 of the Revenue Act of 1921.

A TRUE BILL.

(Sgd) CLIFFORD KIMBALL,

Foreman.

(Sgd) SANFORD B. D. WOOD,

Sanford B. D. Wood,

United States Attorney,

District of Hawaii.

I hereby order a Bench Warrant to issue forthwith on the within indictment for the arrest of the defendant therein named, bail hereby being fixed at \$.....

.....
Judge, U. S. District Court,
Territory of Hawaii. [9]

In the United States District Court
for the Territory of Hawaii.
October Term 1931.

The United States of America,
District of Hawaii.—ss.

Count I.

The Grand Jurors of the United States, empaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oaths, present that:

DANG NAM

on or about the 24th day of January, 1932, at Wailuku, Island of Maui, and within the said district and within the jurisdiction of this Court, did unlawfully, fraudulently, knowingly, and feloniously receive, conceal, buy, sell, and facilitate the transportation, concealment, and sale of, after having been imported and brought into the United States, a certain narcotic drug, said narcotic drug then and there being a derivative and preparation of opium, to wit:

290 grains

of smoking opium and opium prepared for smoking, which said narcotic drug as he, the said

DANG NAM,

then and there well knew had been theretofore imported and brought into the United States contrary to law and to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count II.

And the Grand Jurors aforesaid, upon their oaths, aforesaid, further present, that heretofore, to wit: On the 24th day of January, 1932, at Wailuku, Island of Maui, and within the district aforesaid and within the jurisdiction of this court.

DANG NAM. [10]

the identical person named in the first count of this indictment, did knowingly, unlawfully, fraudulently, and feloniously purchase, sell, dispense, and distribute

290 grains

of smoking opium and opium prepared for smoking from packages to which there was not then and there affixed the tax-paid stamp required by law, which said opium and opium prepared for smoking then and there was a compound, manufacture, salt, derivative, and preparation of opium and was so purchased, sold, dispensed, and distributed by the said

DANG NAM.

as aforesaid, not then and there being in the original stamped package and not being then and there taken from an original stamped package: contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(Sgd) SANFORD B. D. WOOD.

Sanford B. D. Wood.

United States Attorney.

District of Hawaii.

[Endorsed]: Filed Oct. 3, 1932. Wm. F. Thompson, Jr., Clerk. [11]

[Title of Court and Cause.]

WRIT OF HABEAS CORPUS.

The President of the United States of America.

To: JAMES B. BRYAN, ESQUIRE, United States Immigration Inspector in Charge, at the Port of Honolulu, Territory of Hawaii:

We command you that the body of DANG NAM by you detained and imprisoned, as is charged, you have before our District Court of the United States in and for the District and Territory of Hawaii, on Friday, the 7th day of October, A. D. 1932, at the hour of 2 o'clock in the afternoon of said day, together with the cause of the detention of the said DANG NAM, to then and there undergo and receive what our said Court shall consider concerning him in this behalf, and have you then and there this writ with your doings thereon, and you OSCAR COX, ESQUIRE, United States Marshal in and for the District and Territory of Hawaii, or your deputy, are hereby directed and commanded to forthwith serve this writ.

WITNESS the HONORABLE E. K. MASSEE, Judge of the United States District Court in and for the District and Territory of Hawaii, this 3d day of October, A. D. 1932.

WM. F. THOMPSON, JR.,

Clerk, United States District Court in and for the District and Territory of Hawaii.

By (s) E. Langwith, Deputy Clerk.

Let the foregoing writ of Habeas Corpus issue.

(s) EDWARD K. MASSEE,

Judge, United States District Court, in
and for the District of Hawaii.

Bond \$2,000.00

(s) E. K. MASSEE, Judge. [13]

United States Marshal's Return,

The within Writ of Habeas Corpus was received by me on the 3rd day of October A. D. 1932 and is returned executed this 3rd day of October A. D. 1932 by exhibiting the Original Writ of Habeas Corpus and by handing to and leaving with James B. Bryan, U. S. Immigration Inspector, Port of Honolulu, Territory of Hawaii, a certified copy of the within Writ of Habeas Corpus and Petition.

Dated at Honolulu, T. H. this 3rd day of October A. D. 1932.

OSCAR P. COX

United States Marshal.

By (s) Louis K. Kahanamoku,

Deputy U. S. Marshal.

Marshal's Civ. Docket.

No. 1890

Court No. H. C. 252

Fees \$2.00

Expenses

Total \$2.00 [14]

[Title of Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

Now comes James B. Bryan, respondent in response to a writ of habeas corpus issued in the above entitled matter on October 3, 1932, commanding the respondent to produce before the court the body of Dang Nam and show cause for the detention of the said Dang Nam and herewith produces before the court the body of the said Dang Nam and hereby shows cause for his detention, alleging as follows:

I.

That the respondent is—and from February 16, 1932, has been—the District Director of Immigration of the Bureau of Immigration of the United States Department of Labor, at the Port of Honolulu, Territory of Hawaii:

II.

That on April 18, 1932, the petitioner, the said Dang Nam, an alien—who is not an addict who is not a dealer in, or peddler of, any of the narcotic drugs hereinafter mentioned in this paragraph—was convicted and sentenced in the United States District Court for the Territory of Hawaii for the violation of a “statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of [16] opium, coca leaves, heroin, or any salt,

derivative, or preparation of opium, coca leaves", as more specifically appears in paragraphs III and IV and Exhibit A of the petition herein filed by the petitioner:

III.

That the Secretary of Labor—pursuant to the obligations of his office, particularly the Act of Congress of February 18, 1931, entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics" (8 U. S. C., section 156a)—on June 29, 1932, issued a warrant for the arrest of the petitioner, looking to his deportation because of the conviction and sentence mentioned in paragraph II hereof, and thereupon the petitioner was arrested under the said warrant and held for a hearing on the propriety of deporting him:

IV.

That, on July 18, 1932, the said hearing was instituted, but, to enable the petitioner to be represented by counsel, was continued until August 12, 1932, at which time, the petitioner then being represented by counsel, a full hearing was had:

V.

That, on August 19, 1932, Charles B. Borella, the immigrant inspector conducting the said hearing, made his report on the same and therein recommended that the petitioner be deported to China:

VI.

That the Secretary of Labor, thereupon, on September 26, 1932, issued a warrant for the deportation of the petitioner, and, pursuant to the same, the respondent [17] was about to deport the petitioner when restrained from so doing by the order of this court.

WHEREFORE, upon the foregoing return to the writ of habeas corpus, it is respectfully submitted that the petitioner be remanded to the custody of the respondent for deportation as ordered by the Secretary of Labor.

(s) JAMES B. BRYAN,

JAMES B. BRYAN,

District Director of Immigration, Port
of Honolulu, Territory of Hawaii.

Honolulu, Hawaii

October, 1932

SANFORD B. D. WOOD

United States Attorney

(s) JOHN ALBERT MATTHEWMAN

JOHN ALBERT MATTHEWMAN

First Assistant U. S. Attorney [18]

The United States of America

Territory of Hawaii

James B. Bryan, under oath, deposes and says:

That he is the District Director of Immigration of the Bureau of Immigration of the United States Department of Labor, at the Port of Honolulu, Territory of Hawaii, and in that capacity made and signed the foregoing Return to Writ of Habeas

Corpus; and that all the allegations contained in the said return are true.

(s) JAMES B. BRYAN.

Subscribed and sworn to, before me, this 17th day of October, 1932.

(Seal) (s) WM. F. THOMPSON, JR.

Clerk, of the United States District
for the Territory of Hawaii.

[Endorsed]: Filed Oct. 17, 1932. Wm. F. Thompson, Jr., Clerk. By Thos. P. Cummins, Deputy Clerk. [19]

[Title of Court and Cause.]

TRAVERSE TO RETURN.

Comes now DANG NAM, petitioner above named, and for traverse to the return of the respondent in the above entitled matter alleges, admits and denies as follows, towit:

I.

Admits the allegations in Paragraph I of said return and for answer to Paragraph 2 of said return says as follows: That he is a Chinese alien addicted to the use of opium and admits that on April 18, 1932, he pleaded guilty and was sentenced in the United States District Court for the Territory of Hawaii for a violation of the Act of December 17, 1914, as amended, and upon entering said plea was sentenced to a term of six months imprisonment in the City and County Jail, all of

which is more fully set forth in Paragraphs 3, 4, 5 and 6 of Petitioner's Petition herein, which is hereby referred to and made a part hereof by this reference.

II.

Admits that the Secretary of Labor, on or about the 29th day of June, 1932, issued a warrant for the arrest of petitioner looking to his deportation because of his plea and sentence, as aforesaid, and admits that your petitioner was arrested under said warrant and held for deportation and that James B. Bryan, District Director of Immigration at the Port of Honolulu, threatens to and will, unless restrained by this Honorable Court [21] deport petitioner, but denies that the said Secretary of Labor had any right, authority or jurisdiction to issue said warrant or to deport petitioner for the following reasons, towit:

(1) That petitioner in entering his plea, as aforesaid, did so under the express promise of the duly accredited representatives of the United States Attorney's office in the said Territory of Hawaii that petitioner would not be deported at the expiration of his said period of imprisonment and at the time of imposing sentence upon petitioner, the Honorable E. K. Masee, United States Judge presiding, ordered and directed, as authorized and provided in Section 155, Title 8, United States Code, that the said petitioner be not deported, all of which is more particularly set forth in Paragraph 5 of petitioner's petition herein, to which reference is hereby made and by this reference made a part hereof.

(2) That petitioner is addicted to the use of opium and is not a peddler or dealer in narcotic drugs of any kind or character.

III.

Admits that on or about the 12th day of August, 1932, a hearing was accorded petitioner by an Immigration Officer at the port of said Honolulu, as set forth in Paragraph 4 of said Return, but has not sufficient knowledge, information or belief to answer Paragraph 5 of said Return.

IV.

Admits that on or about the 26th day of September, 1932, a warrant for deportation was issued against petitioner and that petitioner was about to be deported when restrained by this Honorable Court. [22]

V.

And for further traverse to said Return, petitioner refers to and by reference makes a part hereof all the allegations of his said petition in the above entitled matter.

WHEREFORE, petitioner prays that upon a hearing hereof he may have such relief as may be meet and proper and that the Secretary of Labor and his deputies, assistants and agents be restrained and prohibited from taking any further steps toward the deportation of your petitioner and that he may go hence without day.

Dated October 26th 1932

(s) DANG NAM

Petitioner above named.

United States of America,
Territory of Hawaii.—ss.

Dang Nam, being first duly sworn, on oath, deposes and says: That he is the petitioner above named; that he has heard read and explained to him the foregoing Traverse to Return and knows the contents thereof and that the same is true.

(s) DANG NAM

Subscribed and sworn to before me this 26th day of Oct., 1932.

[Seal]

(s) A. E. JENKINS

Notary Public, Second Judicial Circuit, Territory of Hawaii.

[Endorsed]: Filed Oct. 28, 1932. Wm. F. Thompson, Jr., Clerk. By Thos. P. Cummins, Deputy. [23]

PROCEEDINGS AT CONTINUANCE

From the Minutes of the U. S. District Court for
the Territory of Hawaii

FRIDAY, October 7, 1932

[Title of Court and Cause.]

Upon stipulation between counsel the Court ordered that this matter be continued to Friday, October 14, 1932 at 2 p.m. [24]

PROCEEDINGS AT CONTINUANCE, WIT-
NESSES INSTRUCTED TO APPEAR

From the Minutes of the U. S. District Court for
the Territory of Hawaii

TUESDAY, November 22, 1932

[Title of Court and Cause.]

The Court ordered that the Clerk instruct the witnesses herein to appear November 23, 1932 at 9 a. m. [25]

PROCEEDINGS AT TRIAL; CONTINUANCE

From the Minutes of the U. S. District Court for
the Territory of Hawaii.

WEDNESDAY, November 23, 1932

[Title of Court and Cause.]

Personally appeared the petitioner herein with Mr. E. J. Botts, his counsel, and also came the respondent herein by Mr. John Albert Matthewman, Assistant United States Attorney. A statement was made by the Court, by Mr. Botts and by Mr. Matthewman. The Court allowed the hearing to proceed subject to being thrown out, allowing the petitioner to put on proof as to whether he is a peddler or an addict. An exception was noted by

Mr. Matthewman. Mr. Matthewman offered the record of the hearing before the immigration officers, same was admitted in evidence as U. S. Exhibit #1, marked and ordered filed. Mr. Matthewman made a further exception which was noted. Dung Leong was called and sworn and testified on behalf of the petitioner. Mrs. Dang Nam was called and sworn to testify on behalf of the petitioner. This witness was withdrawn until the arrival of a Korean interpreter. Dr. Thomas Mossman was called and sworn and testified on behalf of the Petitioner Mrs. Dang Nam resumed the witness stand. Dang Nam was called and sworn and testified on his own behalf. At 12:25 the Court ordered that this case be continued to 1:30 p. m. Dang Nam resumed the witness stand. This witness was withdrawn and William Viela was called and sworn and testified on behalf of the respondent. Prescott A. Foo was called and sworn and testified on behalf of the respondent. Dang Nam resumed the witness stand. Charles Kekuewa was called and sworn and testified on behalf of the respondent. The time for adjournment having arrived the Court ordered that this case be continued to November 25, 1932 at 2 p. m. for further hearing. [26]

PROCEEDINGS AT FURTHER TRIAL

From the Minutes of the U. S. District Court for
the Territory of Hawaii.

FRIDAY, November 25, 1932

[Title of Court and Cause.]

On this day came the petitioner herein by Mr. E. J. Botts, his counsel, and also came the respondent herein by Mr. John Albert Matthewman, Assistant United States Attorney, and this case was called for further hearing. Statements were made by Mr. Botts and Mr. Matthewman. The Court ordered that Mr. Botts file the pleadings he intends to file by the first part of the week. The respondent was allowed five days in which to answer. [27]

Form 8 B
Bureau of Immigration
4280/621
No. 55804/231

WARRANT—DEPORTATION OF ALIEN

United States of America

Department of Labor

Washington

Office of District

Director, Honolulu, T. H.

Received Oct. 11, 1932

TO: DISTRICT DIRECTOR OF IMMIGRATION
Honolulu, T. H.

Or to any Officer or Employee of the United States
Immigration Service

WHEREAS, from proofs submitted to—me—Assistant to the Secretary, after due hearing before Immigrant Inspector Charles B. Borella, held at Honolulu, T. H., I have become satisfied that the alien DANG NAM alias DANG SAU SANG alias TSAN NAM, who landed at the port of Honolulu, T. H. ex SS “Coptic”, on or about the 5th day of June, 1896, has been found in the United States in violation of the immigration act of February 18, 1931. to-wit. That since February 18, 1931, he has been convicted and sentenced for violation of a statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, and is not within an exception to the aforementioned act, and may be deported in accordance therewith:

I. W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in my by the laws of the United States, do hereby command you to return the said alien to—China—the country whence he case, at the expense of the appropriation “Salaries and Expenses, Bureau of Immigration, 1933”, including the expenses of an attendant, if necessary. Execution of this warrant should be deferred until such time as the alien is released from imprisonment.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 26th day of September, 1932.

(Seal)

(s) W. N. SMELSER,
Assistant to the Secretary of Labor.

[28]

Treasury Department
U. S. Public Health Service
Form 1975

MEDICAL CERTIFICATE

Station Hon. T. H. August 16, 1932

Name Dang Nam

Age 51

Sex Male

Nat. China

Race Chinese

Date arrival

SS.

Class

Manifest No.

This is to certify that the above-described person has this day been examined and is found to be afflicted with:

I have this day examined the above named and in my opinion he is able to travel without danger to life or health in event of deportation. He will not require special care or attention on voyage.

EXHIBIT "B"

(s) E. W. Norris, P. A., Surgeon

4280/621

[29]

Treasury Department
U. S. Public Health Service
Form 1975

MEDICAL CERTIFICATE

Station Hon. T. H. July 18, 1932

Name Dang Nam
Age 51 Sex Male
Nat. China Race Chinese
Date arrival
SS.
Class Manifest No.

This is to certify that the above-described person has this day been examined and is found to be afflicted with:

I have this day examined the above named chinese male and have found no evidence that he is addicted to the use of drugs. In my opinion he was not an addict at the time of his conviction April 18, 1932.

EXHIBIT "A"

(s) E. W. Norris, P. A., Surgeon
4280/621 [30]

Form 607

U. S. DEPARTMENT OF LABOR

Immigration Service

File No. 4280/621

Report of Hearing in the Case of
DANG NAM alias DAN SAU SANG
Alias TSAN NAM

Under Department Warrant No. 55804/231.

Dated June 29, 1932 (Telegraphic). Hearing conducted by Inspector Borella at Honolulu, T. H. Date July 18, 1932.

Alien placed under arrest at City and County Jail, Honolulu, T. H. July 18, 1932 at 11 p. m. by Inspector Charles B. Borella and allowed to remain there.

Testimony taken and transcribed by Willis K. Leong.

Said DANG NAM alias DAN SAU SANG alias TSAN NAM, being unable to speak and understand the English language satisfactorily, an interpreter, named Willis K. Leong, competent in the Chinese language, was employed.

Said DANG NAM alias Dan Sau Sang alias Tsan Nam was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was not accepted. The alien being first duly sworn, the following evidence was presented:

Q. What is your correct name?

A. Dang Nam, my marriage name is Dang Sau Sang.

Q. Have you ever been known by another name?

A.

Q. You are advised that under these proceedings you have the right to be represented by counsel. Do you desire to obtain the services of a lawyer?

A. Yes. [31]

Q. Have you funds to employ an attorney?

A. Yes.

Q. Who will you employ as your attorney?

A. E. J. Botts.

Q. When will you be ready to proceed with this hearing?

A. I will be ready to proceed at any time, but I would like to have you make arrangements with my attorney, and whenever he is ready, I will proceed with the hearing.

You are advised that if you employ an attorney, it will be necessary for you to pay for his services. Do you understand?

A. Yes.

Hearing deferred until arrangements for a hearing may be made with Attorney Botts.

(s) CHARLES B. BORELLA,
Immigrant Inspector [32]

U. S. DEPARTMENT OF LABOR

Immigration Service

Honolulu, T. H.

File No. 4280/621 DANG NAM case continued.
August 12, 1932.

Present: C. B. Borella, inspector; W. K. Leong, interpreter; Mildred Beese, stenographer; E. J. Botts, attorney at law; ALIEN in person.

ALIEN SWORN,

testifies through interpreter as follows:

Q. What are all your names?

A. Dang Nam; marriage name Dang Sau San; no other names.

Q. Are you the same Dang Nam alias Dang Sau San on whom I served a Warrant of Arrest in this prison on July 18, 1932?

A. Yes.

Q. At that time you were advised that you had a right to be represented by counsel and you stated that you desired the services of an attorney and that you would employ Mr. E. J. Botts as counsel. Is that correct?

A. Yes.

Q. Are you now willing and ready to proceed with this hearing?

A. It is entirely up to my attorney.

To Mr. Botts:

Q. Are you ready to proceed with this hearing?

A. Yes, we are ready to proceed.

To alien:

Q. Where and when were you born?

A. I was born at Sam Chow village, Heung Shan district, China on the 8th month, 13th day, Chinese count, I don't remember the year. I am about 53 or 54 years old.

(Testimony of Dang Nam.)

Q. Of what country are you a citizen or subject?

A. Citizen of China.

Q. When and under what name did you first come to the Hawaiian Islands?

A. I don't remember the exact year but it was about 36 or 37 years ago under the name of Dang Nam on the s.s. "Coptic".

Q. At that time did you land in Honolulu?

A. Yes.

Q. At what port did you embark?

A. At Hongkong.

Q. Have you made any trips out of the Hawaiian Islands since your arrival here 36 or 37 years ago?

A. No.

Q. Are you the same Dang Nam that made sworn statements to me at this prison on May 18, 1932?

A. Yes.

Q. Were all the statements you made at that time true and correct?

A. I have forgotten what I said then.

Q. On July 18, 1932 you were examined by Dr. E. W. Norris of the United States Public Health Service. At that time he issued a certificate in your [33] case which reads as follows: "Honolulu, T. H. July 18, 1932; name Dang Nam; age 51; male; nationality China; race Chinese. I have this day examined the above named Chinese male and have found no evidence that he is addicted to the use of

(Testimony of Dang Nam.)

drugs. In my opinion he was not an addict at the time of his conviction April 18, 1932. Signed E. W. Norris, P. A. Surgeon". You are advised that on July 20, 1932 a copy of the statement that you made to me at this prison on May 18, 1932 and the medical certificate issued by the public health doctor on July 18, 1932 were furnished to your attorney on July 20, 1932. You are advised that this medical certificate is marked exhibit "A" and made a part of the record?

A. Yes.

Q. I will now show you all the evidence upon which a warrant of arrest was issued in your case. It consists of a certified copy of indictment filed February 12, 1932; a certified copy of commitment which shows you were convicted and sentenced to six months imprisonment in the City and County Jail, Honolulu, T. H. April 18, 1932 for violation of Section 1 of the Act approved December 17, 1914, as amended; certified copy of the Court minutes wherein the Court stated among other things that you will not be deported; a copy of your sworn statement made to me at this jail May 18, 1932. This evidence is already in possession of the Secretary of Labor at Washington, D. C. who will consider same together with all the evidence presented at this hearing or in connection with this hearing prior to arriving at his final decision in your case. Do you wish to examine the evidence?

(Testimony of Dang Nam.)

A. I wish my attorney to examine it.

Attorney Botts examines the evidence upon which the Warrant of Arrest was issued in this case.

Q. Were you ever arrested at any time for violation of the narcotic laws prior to your last arrest?

A. No.

Q. Have you ever been arrested for any offense at any time other than for the offense for which you are now serving a sentence?

A. About twenty years ago in Hilo I knew about a white man bringing opium into Hilo and was asked by the government to appear as a witness against him at which time I refused and was fined by the Court.

Q. Have you ever sold opium or narcotic drugs at any time?

A. No.

Q. Have you ever dealt in narcotics?

A. No.

Q. Did you ever peddle narcotics?

A. No.

Q. Are you now a drug addict?

A. I used to smoke opium but at present I do not use very much except when I am sick.

Q. Were you at one time an habitual smoker of opium?

A. Yes about seven or eight years ago.

Q. When did you quit the habitual use of opium?

A. In 1926.

(Testimony of Dang Nam.)

Q. When you were convicted and sentenced to six months at the City and County Jail on April 18, 1932 were you a drug addict?

A. No.

Q. You are advised that the purpose of this hearing is to offer you an opportunity to show cause if any there be as to why you should not be deported to China the country whence you came in accordance with law. Have you any evidence to offer as to why you should not be deported?

A. I will leave that up to my attorney.

Q. Have you anything to say as to why you should not be deported?

A. I have nothing to say. [34]

To attorney:

Q. Have you any evidence to introduce at this time to show cause if any there be as to why this alien should not be deported?

A. I wish to be sworn to make a statement in the record respecting the proceedings in the Federal Court leading up to the plea entering Dang Nam in that Court on April 18, 1932.

ATTORNEY BOTTS SWORN.

My name is E. J. Botts and I am an attorney-at-law practicing in all the courts in the Territory and have so practiced for seventeen years. I was employed to represent Dang Nam following his in-

(Testimony of Attorney Botts.)

dictment for narcotic violation on February 12, 1932 and attended Court with him shortly thereafter when he entered plea of not guilty to both counts in the indictment. Thereafter I entered into negotiations with the U. S. District Attorney's office, particularly with Mr. Moore of that office, to see if a settlement could be reached without the necessity of a trial. The Government's evidence indicating the search of the dwelling of Dang Nam a small amount of opium was found in a garment in the bathroom. After some negotiation with Mr. Moore it was agreed that if Dang Nam entered a plea of guilty he would receive a sentence of six months in the City and County Jail and that the Court would order that he should not be deported at the expiration of his sentence. In these negotiations with the District Attorney, we did not admit and we do not admit now that Dang Nam was actually the possessor of the opium or any opium and the plea entered was in the nature of a "Nolo Contendere" and I believe recognized as such by the District Attorney's office. In reliance upon the promise and assurance of the District Attorney and the Court on said April 18, 1932 Dang Nam entered a plea of guilty to the indictment. At the request of Mr. Moore the plea was entered to the second count which charges the violation of the Act of December 17, 1914, as amended. The Court, upon receiving the plea of the defendant, sentenced him in conformity with the understanding and arrangement

(Testimony of Attorney Botts.)

and expressly stated that at the expiration of the six months imprisonment Dang Nam should not be deported. We relied upon this order of the Court and the good faith of the officers who made it and believe that the order should be upheld by the Secretary.

Q. Had you known that your client would have faced deportation proceedings if convicted, would you have advised him to plead guilty?

A. I advised him not to plead along that line because I felt that the Government's case was one that could not be sustained. The jury would have acquitted him. The defendant was apprehensive of his chances of being deported if he were convicted and the only reason why he did plead guilty was to avoid my risk of deportation.

To alien:

Q. Have you ever been married?

A. Yes, I was married three times.

Q. Are you married at the present time?

A. Yes.

Q. What is the name of your wife?

A. Ha Quen a Korean woman.

Q. Is she a native of Korea?

A. Yes.

Q. When were you married to her?

A. In 1925 or 1926. [35]

Q. Did you have any children by your first two wives?

A. No.

(Testimony of Attorney Botts.)

Q. Have you any children by your present wife?

A. One son only Dang Kwan Shou, six years old, born in Honolulu.

Q. Where is your wife and child now residing?

A. At Wailuku, Maui.

Q. Was your father ever a citizen of the United States?

A. My father was in the Hawaiian Islands but I don't know whether or not he was ever naturalized as a citizen.

Q. Is your father living?

A. No, he is dead.

Q. What was his name and when did he die?

A. Dang Lung.

Q. Do you know how long he was in the Hawaiian Islands?

A. I don't know.

Q. Have you any evidence that he ever was a citizen of Hawaii?

A. I don't know if he was ever naturalized as a citizen of Hawaii; I have no evidence.

Q. In the event that you are ordered deported to China to whom do you wish to be sent?

A. I don't know.

Q. Have you any near relatives in China?

A. I have a sister whose name is Dang Ngo living in Nam Sui village, Heung Shan district China.

Q. Would you want to be sent to her if you were ordered deported?

(Testimony of Attorney Botts.)

A. I want to leave that up to my attorney.

Q. In the event that you are ordered deported to what port in China would you like to be sent?

A. You will have to ask my attorney.

Q. Are you in good health at the present time?

A. I feel a little bit ill now.

Q. What is the nature of your illness?

A. Heart burn.

Q. You are advised that under the Act of March 4, 1929, as amended, you will, if ordered deported, and thereafter enter or attempt to enter the United States, be guilty of a felony and upon conviction thereof shall be liable to imprisonment for not more than two years, or a fine of not more than \$1000, or both such fine and imprisonment, unless subsequent to a year from deportation or departure under warrant you both apply for and obtain from the Secretary of Labor permission to apply for admission and thereafter make a legal application for admission. Do you understand?

A. Yes.

Witness, Mr. CHARLES KEKUEWA,
jailer, sworn, testifies in English as follows:

Q. What is your name and official title?

A. Charles Kekuewa; Jailer at the City and County Jail, Honolulu.

Q. Who is this person? (indicating alien).

(Testimony of Mr. Charles Kekuewa.)

A. Dang Nam.

Q. How long has he been in this institution?

A. He came here April 18, 1932 and has been here since that time.

Q. Is he a drug addict to your knowledge?

A. Not that I know of.

Q. Has he ever asked you for any narcotic drugs?

A. No.

Q. Has he indicated a desire for such narcotic drugs?

A. No.

Q. Have you ever heard any of the other prisoners say that he was a drug addict?

A. No. [36]

Q. To your knowledge has he ever had the use of opium while in this institution?

A. No.

Q. Have you anything further to state?

A. I know he came to me to see a physician for his health and I sent for the city physician Mr. Mossman for examination and he said that he has the touch of T. B. and was ordered by the doctor to be placed in confinement and give him plenty of rest and to see the physician twice a week.

Q. Does he work?

A. No.

Q. Has he ever refused to work because of his health?

(Testimony of Charles Kekuewa.)

A. No; we don't force prisoners here to work unless they have to.

Q. From his general habits and manner while here would you say that he was a sick man?

A. Yes, he is.

Q. Have you anything further to say?

A. No.

To Mr. Botts:

Q. Do you desire to ask Mr. Kekuewa any questions?

A. No.

To Mr. Kekuewa:

Q. Have you understood all the questions?

A. Yes.

To Alien:

Q. Have you anything further to say?

A. No.

Q. Have you understood the interpreter and all the questions?

A. Yes.

To Mr. Botts:

Q. Do you desire to ask this alien any questions?

A. No.

Q. Have you anything to state?

A. I would like to get in touch with Dang Nam's wife who is on Maui and produce her as a witness in his behalf and I will wireless her tonight asking her to come at once to Honolulu and if she can come I will present her at the Immigration Bureau Tuesday at 9:30 A. M. If she can't come we will have to close the hearing.

(Testimony of Charles Kekuewa.)

Q. You are advised that when this hearing is completed you will be furnished a copy of same and you may submit a brief to Washington at the time this record is forwarded?

A. Yes.

Physical description of alien Dang Nam: Height: 5' 6". Pock mark above right eyebrow; scar right index finger; scar left index finger; hair black; eyes brown. [37]

4280/621

August 16, 1932.

Note by Inspector Borella:

Mr. E. J. Botts, attorney for Dang Nam, telephoned this morning advising me that he would not present Dang Nam's wife as a witness; that he had no further evidence or witnesses to introduce and that he considered the hearing closed.

In view of the fact the record indicates that the alien Dang Nam is afflicted with T. B., he will be examined by a doctor of the U. S. Public Health Service who will issue a certificate as to his findings in which he will state:

- (1) whether such alien is in condition to be deported without danger to life;
- (2) whether he will require special care and attention on the voyage.

Said certificate will be marked exhibit "B" and made a part of this record.

Mr. Botts has been informed accordingly and advised that he has the right to be present during said physical examination but he waived his right. Mr. Botts was further advised that he would be furnished with a copy of the medical certificate together with transcript of this hearing.

The following medical certificate has been issued on this date (August 16, 1932)

Station Hon. T. H. August 16, 1932

Name Dang Nam

Age 51 Sex Male

Nat. China Race Chinese

I have this day examined the above named and in my opinion he is able to travel without danger to life or health in event of deportation. He will not require special care or attention on voyage.

(Signed) E. W. Norris P. A. Surgeon

The above certificate is marked Exhibit "B" and made a part of this record. [38]

Form 607, Sheet 2

File 4280/621

U. S. DEPARTMENT OF LABOR

Immigration Service

August 19, 1932

SUMMARY:

The record in this case shows that DANG NAM alias DANG SAU SANG alias TSAN NAM is an

alien, native and citizen of China; that he is in the United States in violation of the act of February 18, 1931, in that since February 18, 1931, he has been convicted and sentenced for violation of a statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, and is not within any exception to the aforementioned act.

RECOMMENDATION:

In view of the fact that the charge in this case has been sustained, it is recommended that this alien be deported to China, the country whence he came, at the expense of the Government upon his lawful release from prison.

(S) CHARLES B. BORELLA

Charles B. Borella

Immigrant Inspector.

I certify that the foregoing is a true and correct transcript of the record of hearing in this case.

(S) MILDRED BEESE

Mildred Beese,

Stenographer [39]

Bureau of Immigration
Form 8-A

Office of District
Director, Honolulu,
T. H. Received Sep.
8, 1932

WARRANT—ARREST OF ALIEN

United States of America

No. 4280/621 Department of Labor
Washington

No. 55804/231

To DISTRICT DIRECTOR OF IMMIGRATION,
Honolulu, T. H.,

Or to any Immigrant Inspector in the service of the
United States.

WHEREAS, from evidence submitted to me, it appears that the alien DANG NAM, alias DANG SAU SANG, alias TSAN NAM, who landed at the port of Honolulu, T. H., ex SS "Coptic", about the year 1895, has been found in the United States in violation of the immigration act of February 18, 1931, in that since February 18, 1931, he has been convicted and sentenced for violation of (or conspiracy to violate) a statute of the United States, taxing, prohibiting, or regulating the manufacture, production compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, and is not within any exception to the aforementioned act.

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in *my* by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with the law. The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Salaries and Expenses, Bureau of Immigration, 1932". Pending further proceedings, the alien should be permitted to remain in his present location without expense to the Immigration Service.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 29th day of June, 1932.

[Seal] (s) W. N. SMELSER,
Assistant to the Secretary of Labor. [40]

U. S. DEPARTMENT OF LABOR
Immigration Service
Honolulu, T. H.

4280/621

In the Matter of DANG NAM, touching his right to be and remain in the United States.

Statement taken at the City and County Jail, Honolulu, T. H. this 18th day of May, 1932.

Present: Charles B. Borella—Examining Inspector
Ruth B. Lanke—Stenographer
Willis K. Leong—Interpreter
Alien in person.

Examining Inspector addressing alien:

You are advised that I am an immigrant inspector having power to administer oaths and take and consider evidence touching the right of any alien to enter, reenter, pass through or reside in the United States; that a statement is desired from you, such statement to be voluntary on your part and under oath and may be used against you in subsequent proceedings.

Q. Are you willing to make such a statement?

A. Yes.

ALIEN

first duly sworn testifies through interpreter as follows:

Q. What are all your names?

A. Dang Nam. My marriage name is Dang Sau Sang.

Q. How old are you and where and when were you born?

A. I am 54 years old; born at Sam Jo Village, HSD, China. I was born in the 8th month, 13th day, Chinese count; I do not remember the year. (K.S. 4—8th month, 13th day—September 9, 1878).

Q. Of what country are you now a citizen or subject?

A. Citizen of China of the Chinese race.

(Testimony of Dang Nam.)

Q. When and under what name did you first come to the Hawaiian Islands?

A. I first came here about 36 or 37 years ago under the name of Dang Nam on the ss "Coptic". I embarked at Hong Kong and landed at the port of Honolulu.

Q. Have you made any trips out of the Hawaiian Islands since your arrival about 36, 37 years ago?

A. No.

Q. Have you a certificate of residence?

A. It is at the immigration station. I left it there when I made application for a return certificate last year about October.

Q. Is your certificate of residence issued in the name of Dang Nam?

A. Yes.

Q. Are you the same Dang Nam that was sentenced to imprisonment in the City and County Jail for six months on May 2, 1932 for violation of the narcotic laws?

A. Yes.

Q. Did you plead guilty when you were arrested for the violation of the narcotic laws?

A. Yes; I had opium in my possession.

Q. Did the Judge recommend that you be not deported when he sentenced you?

A. I do not know because I was represented by an attorney. [41]

Q. Have you ever been arrested before?

A. No.

(Testimony of Dang Nam.)

Q. Were you ever arrested in China prior to your coming to Hawaii?

A. No.

Q. Have you ever sold opium or any other drug at any time?

A. No.

Q. Have you ever peddled any narcotic drugs?

A. No.

Q. Have you ever been a dealer in narcotics?

A. No.

Q. Are you a drug addict?

A. I have been smoking since 1925.

Q. How did you happen to have opium in your possession when you were arrested if you are not an addict?

A. I did not have it on my person, it was in my yard. I do not know who it belonged to. It did not belong to me.

Q. How many times have you been married?

A. Three times.

Q. Have any of your wives ever resided in the Hawaiian Islands?

A. They all have resided in the Hawaiian Islands.

Q. What is the name of your present wife?

A. She is a Korean woman by name of Har Quen.

Q. Have you any children by her?

A. I have one son—Dang Quan Sur, age 6, born in Honolulu, now residing at Wailuku, Maui with his mother.

Q. What are the names of your first two wives?

(Testimony of Dang Nam.)

A. First one is a Hawaiian woman by name Kalana; she died in Maui about 4 or 5 years ago. I had no children by her. My second wife was Wong Kui, I do not know where she was born. We were divorced ten years ago. I had no children by her.

Q. What was your occupation and address before you were arrested?

A. I peddled silks and material and lived at Wailuku, Maui.

Q. When and where did you marry your present wife?

A. I married her in Honolulu about January, 1926.

Q. Do you believe in the overthrow of organized government by force or violence?

A. No.

Q. Have you ever been connected with a house of prostitution in any way?

A. No.

Q. Why did you plead guilty to the violation of the narcotic laws if the narcotics which were found were not in your possession and did not belong to you?

A. I pleaded guilty because a small quantity was found in my wife's room. She used that as medicine.

Q. Did the authorities find some marked money on you which you had taken in exchange for the sale of opium?

(Testimony of Dang Nam.)

A. An informer gave marked money to my wife and she gave it to me.

Q. How did your wife happen to receive this marked money?

A. I do not know how my wife got the money.

Q. Have you anything to state?

A. No; except that I have always been a merchant since 1919.

Q. Have you understood the interpreter at all times?

A. Yes.

Physical description: Pock mark above right eyebrow; scar right index finger; scar left index finger. Height 5 ft. 6 ins. without shoes.

Note: The prison records of this institution do not contain finger print impressions or photographs of this alien or physical description. [42]

Note: File 4380/2783 re Tsan Nam contains certificate of residence No. 9338 issued to Tsan Nam at Honolulu, T. H. May 9, 1901. This file also shows that Tsan Nam applied for Form 432 at this office June 22, 1931 and photograph attached thereto is that of the above named alien. There is a memorandum in this file showing that on August 1, 1931 Tsan Nam withdrew his application for Form 432.

Certified a true transcript.

(s) RUTH B. LANKE

Stenographer.

(s) CHARLES B. BORELLA

Immigrant Inspector. [43]

Form 110

Treasury Department

U. S. Narcotic Service

January 1931

STATEMENT OF ALIEN CHARGED WITH
VIOLATION OF FEDERAL NARCOTIC
LAWS

Case No. H-4214 Office of Narcotic Agent in Charge,

Name of Alien Dang Nam Wailuku, Maui, T. H.

January 25, 1932

Director of Immigration,
At Honolulu, T. H.

The following statement was made before Wm.
K. Wells, Narcotic Agent at Wailuku, Maui, T. H.
on January 25, 1932:

Q. What is your name?

A. Dang Nam.

Q. Sex?

A. Male.

Q. What is your age?

A. 53.

Q. Where were you born?

A. Macao, China.

Q. What is your nationality?

A. Chinese. China.

Q. When and where did you last enter the
U. S.?

A. 1896 at Honolulu, T. H.

Q. By what means did you last enter the U. S.?

A. S. S. Coptic.

Q. Were you at that time inspected by an Im-
migrant Inspector?

A. No.

Q. Did you at time of last entry have an unexpired Immigration Visa?

A. No.

Q. Did you at time of last entry have a Visaed Passport?

A. No.

Q. For what purpose did you come to the United States?

A. Coolie laborer.

Q. What is your present residence address?

A. Vineyard St., near Market St., Wailuku, Maui, T. H.

(s) DANG NAM

Dang Nam.

I hereby certify that the foregoing is a true record of the statements made to me by the alien above named, and that said alien has been charged with violation of the Federal narcotic laws in the Federal Court at Honolulu, T. H. and is now on bond for trial.

Remarks: The defendant was arrested after he had made two sales of smoking opium and the marked money was found on his person, and a quantity of opium was found on the premises. He plead guilty on April 18, 1932, before Judge E. K. Masee and was sentenced to 6 Mos. in the City and County Jail at Honolulu (2nd ct.) mittimus stayed until May 2, 1932—and placed on probation for 3 yrs. (1st Ct.) and ordered to report at the Narcotic Office when released from jail, and to report to the probation officer

once during the first week of each month for six months, upon expiration of prison sentence. [44] The Court recommended that he be not deported unless he is apprehended for violation of the provisions of his probation imposed under Court I.

(s) WM. K. WELLS

Wm. K. Wells

Respectfully submitted,

(s) C. T. STEVENSON

C. T. Stevenson,

Assistant Narcotic Agent in Charge.

Received

Office of District Director,

Apr. 20, 1932

U. S. Immigration Service,

Honolulu, T. H. [45]

[Title of Court and Cause.]

SYLLABUS.

1. Aliens—Deportation of, for violation of Narcotic Laws. An alien may be deported under the Act of February 18, 1931, (8 U. S. C. A. 156a), even though the Judge sentencing such alien recommended no deportation.

2. Same—Manner of Deportation. Congress in enacting the Act of 1931 did so with knowledge of the interpretation placed upon the words “upon warrant issued by the Secretary of Labor, be taken

into custody and deported in accordance with the provisions of” by the Ninth Circuit Court. Instead of using these words it used the words “be taken into custody and deported in manner provided in”. It must have meant just what it so clearly expressed, that is, to adopt only such parts of sections 19 and 20 as provided the manner of taking into custody and the manner of deporting. Section 19 provides this shall be “upon warrant of the Secretary of Labor”, while section 20 designates the ports to which the alien shall be deported and the details relative to expense. Under section 19, and regulations, the Secretary issues two warrants, one for taking the alien into custody and one for deporting him. [47]

[Title of Court and Cause.]

DECISION.

The Petitioner, on April 18, 1932, pleaded guilty to a violation of the Harrison Narcotic Act and was sentenced to six months in jail. At the time of the sentence the Court stated that it recommended no deportation. Deportation was later ordered under the Act of February 18, 1931, 46 Stat. 1171 (8 U. S. C. A., 156a) and Petition for Writ of Habeas Corpus was filed. It was stipulated that the only point to be decided is, whether or not, in view of the provisions of the above Act, the recom-

mentation of the Judge is binding on the Secretary of Labor and prevents deportation.

The Act above cited is as follows:

“Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this section) who, after February 18, 1931, shall be convicted and sentenced for violation of or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in manner provided in Sections 155 and 156 of this title”.

Prior to the passage of this Act, deportation for conviction of offenses connected with narcotics was limited to violation of the Act of May 26, 1922, as amended, (42 Stat. [48] 596, (21 U. S. C. A., Sec. 174)), relating to smuggling or unlawful connection with smuggled drugs, knowing the same to have been imported contrary to law, and the deportation statute provided that they should “upon warrant issued by the Secretary of Labor, be taken into custody and deported in accordance with the provisions of sections 19 and 20 of the Act of February 5, 1917”, (155 and 156, Title 8 U. S. C. A.).

The Ninth Circuit Court of Appeals, in Weedin

v. Moy Fat, 8 F. (2d) 488, held that so much of section 19 as allowed deportation only when sentenced to more than one year was controlling and in *Hampton v. Wong Ging*, 299 Fed. 289, the same court held that the part of section 19, *supra*, relative to not allowing deportation where the court recommended against same was controlling in deportation in narcotic cases. In the *Moy Fat* case the court stated:

“It is suggested * * * that the Act of May 26, 1922, in adopting sections 19 and 20 of the prior Act, was intended to prescribe only the manner of taking into custody and the manner of deportation, but we think it more inclusive and limits the authority to deport”.

In *Chung Que Fong v. Nagle*, 15 F. (2d) 789, having reference to whether or not an alien could be so deported after five years after entry, the same court, after reviewing the two former cases, stated:

“And the language of the *Wong Ging* decision that the Narcotic Act ‘adopts the whole of the provisions relative to deportation contained in those sections (sections 19, 20, Immigration Act) * * *’ is to be construed to mean that such provisions are adopted as are not the subject of express terms in the Narcotic Act amendment inconsistent therewith”.

The only reported case dealing expressly with the provisions of the Act of February 18, 1931, is *The*

Conte Grande (D. C., N. Y.) 53 F. (2d) 475, where the court stated: [49]

“This statute further provides that the deportation shall be ‘in the manner provided in sections 19 and 20’ of the Immigration Act of 1917 (8 U. S. C. A. secs. 155, 156). Counsel for the alien argues that by reason of the reference to these parts of the act of 1917, there can be no lawful deportation except for a cause and under conditions specified in sections 19 and 20 of the 1917 act. So to construe the new statute would nullify it. It is therein expressly provided that the ‘manner’ of the deportation shall be in accord with the provisions of the older statute. Sections 19 and 20 of the 1917 act (8 U. S. C. A. secs. 155, 156) prescribe what the manner of a deportation thereunder shall be. It is only to the extent of the manner thereby prescribed that the 1931 act requires that they be complied with. For this reason the court decisions cited by counsel as to the conditions of deportation under sections 19 and 20, as they existed previous to the Act of February 18, 1931, are not of assistance and have no pertinency here”.

Counsel for Petitioner contends that because the House Bill was designated “an act to amend section 19 of the Act of February 5, 1917”, the Act in question now stands as an amendment to said section 19.

Whether termed an amendment to section 19 or otherwise its language is too plain to give it the construction urged by counsel. However, a more diligent search of the Congressional Record would have shown that on February 10, 1931 (Record p. 4562) the title was amended in the Senate to read: "A Bill to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics". This amendment was agreed to by the House, February 14, 1931, (Record p. 5028), which title the Act bore when approved.

Congress in enacting the Act of 1931 did so with knowledge of the interpretation placed upon the words "upon warrant issued by the Secretary of Labor, be taken into custody and deported in accordance with the provisions of" by the Ninth Circuit Court and when, instead of using these [50] words it used the words "be taken into custody and deported in manner provided in", it meant just what it so clearly expressed, that is, to adopt only such parts of sections 19 and 20 as provided the manner of taking into custody and the manner of deporting Section 19 provides this shall be "upon warrant of the Secretary of Labor", while section 20 designates the ports to which the alien shall be deported and the details relative to expense. Under section 19, and regulations, the Secretary issues two warrants, one for taking the alien into custody and one for deporting him.

It is therefore apparent that the recommendation of the Court in the instant case had no binding effect upon the Department of Labor, and was ineffective to prevent deportation by the Secretary.

Having been the Judge who recommended no deportation, I regret exceedingly that I must be the one to arrive at the above finding, but I see no escape from the conclusion here reached.

IT IS THEREFORE ORDERED, That the Writ be discharged and the Petitioner remanded to the defendant within ten days from the filing of the Order in this case, or such further time as may be ordered by the Court.

An Order to this effect will issue.

Dated: Honolulu, T. H., December 1, 1932.

(s) EDWARD K. MASSEE,
Judge United States District Court, Ter-
ritory of Hawaii.

[Endorsed]: Filed Dec. 1, 1932. Wm. F. Thomp-
son, Jr., Clerk. By Thos. P. Cummins, Deputy.

[51]

Habeas Corpus No. 252

In the United States District Court for the
Territory of Hawaii

In the Matter of the Application of

DANG NAM

For a Writ of Habeas Corpus

JUDGMENT

WHEREAS, on October 3, 1932, there was filed

the petition of Dang Nam, alleging that James B. Bryan, District Director of Immigration was unlawfully holding in custody, and about to deport, the said Dang Nam, and praying that a writ of habeas corpus issue directing the said James B. Bryan to produce the body of the said Dang Nam before this court "to do, submit to and receive what the law may require"; and

WHEREAS, on the same day, a writ of habeas corpus did issue with such directions to the said James B. Bryan; and

WHEREAS, on October 17, 1932, the said James B. Bryan filed a return to the writ of habeas corpus, in which return he alleged, inter alia, that the said Dang Nam, being an alien—who is not an addict who is not a dealer in, or peddler of, any of the narcotic drugs hereinafter mentioned in this paragraph—was convicted and sentenced in the United States District Court for the Territory of Hawaii for the violation of a "statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, [53] dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium, coca leaves", and that he, the said James B. Bryan, for that reason was about to deport the said Dang Nam unless restrained from so doing by the court; and

WHEREAS, on October 18, 1932, the said Dang Nam filed a traverse to the return, in which traverse he set up, inter alia, that he is such an addict and not such a dealer; and

WHEREAS, on November 23 and 25, 1932, hearings were had upon the issues presented by the traverse to the return; and

WHEREAS due consideration has been given to the law and the facts thus presented to the court; now, therefore

IT IS HEREBY ADJUDGED that the said Dang Nam, being an alien—who is not an addict who is not a dealer in, or peddler of, any of the narcotic drugs hereinafter mentioned in this paragraph—was convicted and sentenced in the United States District Court for the Territory of Hawaii for the violation of a “statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium, coca leaves”, that rightfully he may be deported by the said James B. Bryan, that the writ of habeas be discharged and that the said Dang Nam be remanded to the said James B. Bryan within ten days from the filing of this judgment.

(s) EDWARD K. MASSEE

Judge.

United States District Court
Territory of Hawaii.

Honolulu, Hawaii

December 3, 1932. [54]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Honorable, the Presiding Judge of the Above
Entitled Court:

The above named, DANG NAM, conceiving himself aggrieved by the judgment in the above-entitled cause made and entered on the 3rd day of December, 1932, does hereby appeal from the said judgment to the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, for the reasons set forth in the assignment of errors to be filed herein, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of all proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States.

Dated this 21 day of Dec., A. D. 1932.

DANG NAM

By (s) E. J. Botts

His Attorney.

[Endorsed]: Filed Dec. 21, 1932. Wm. F. Thompson, Jr., Clerk. By Thos. P. Cummins, Deputy. [56]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now DANG NAM, above named, and files the following assignment of errors on which he will rely in the prosecution of his appeal in the above entitled cause from the judgment entered herein on the 3rd day of December, 1932, in the United

States District Court in and for the District and Territory of Hawaii:

1. That the court erred in dismissing the petition herein and ordering the petitioner remanded to the respondent for deportation.

2. That the court erred in holding and deciding that the Act of February 18, 1931 (Section 156-a, Title 8, U. S. Code) providing for the deportation of aliens convicted of violations of the Harrison Narcotic Act, (Act of December 17, 1914) made such deportation mandatory and deprived the court in such cases of the power granted to it under Section 19 of the Immigration Act of February 5, 1917 (Section 155, Title 8, U. S. Code) to recommend against deportation.

3. The defendant, having pleaded guilty herein to a violation of the Harrison Narcotic Act (Act of December 17, 1914) and the court, at the time of sentencing said defendant, having recommended, as provided in Section 19 of the Immigration Act of February 5, 1917 (Section 155, Title 8, U. S. Code) that he should not be deported at the termination of his sentence, [58] the court erred in holding and deciding herein that such recommendation was without effect in staying the deportation of defendant and that notwithstanding such recommendation defendant must be remanded to the custody of the immigration authorities for deportation.

WHEREFORE, the appellant prays that said judgment be reversed and that said District Court for the District and Territory of Hawaii be ordered

to enter a judgment sustaining the writ of habeas corpus herein and discharging appellant.

(s) E. J. BOTTS

Attorney for Appellant.

[Endorsed]: Filed Dec. 21, 1932. Wm. F. Thompson, Jr., Clerk. By Thos. P. Cummins, Deputy. [59]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon application of DANG NAM and upon the motion of his attorney, E. J. Botts, Esquire,

IT IS HEREBY ORDERED that the petition for appeal, heretofore filed by the above-named Dang Nam, be and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit from the final judgment, heretofore, on the 3rd day of December, 1932, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the Clerk of this court to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California.

Dated this 21 day of December, 1932.

(s) EDWARD K. MASSEE

Judge,

United States District Court,
District and Territory of Hawaii.

Received a copy of the above order.

(s) SANFORD B. D. WOOD

United States Attorney.

[Endorsed]: Filed Dec. 21, 1932. Wm. F. Thompson, Jr., Clerk. By Thos P. Cummins, Deputy. [61]

[Title of Court and Cause.]

COST BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, DANG NAM, of Wailuku, County of Maui, Territory of Hawaii, as principal, and FRANK NICHOLS and ED. TOWNSEND, of Honolulu, City and County of Honolulu, Territory of Hawaii, as sureties, are held and firmly bound unto the United States of America in the sum of Five Hundred Dollars (\$500.00) to be paid to said United States of America, for the payment of which well and truly to be made, we bind ourselves and our respective heirs, executors and administrators, jointly and severally, by these presents.

THE CONDITION of this obligation is such, that

WHEREAS the above named principal has taken an appeal from the District Court of the United States in and for the District and Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decision made, rendered and filed in the above entitled cause on the 1st day of December, A. D. 1932.

NOW, THEREFORE, if the above-named principal shall prosecute his appeal to effect and shall answer all costs, if he fails to make good his appeal, then this obligation shall be void; otherwise to remain in full force and effect. [63]

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 6th day of December, A. D. 1932.

[Seal] (s) DANG NAM

[Seal] (s) FRANK NICHOLS

[Seal] (s) ED. TOWNSEND

Taken and acknowledged before me, as to said Principal, the day and year first above written, at Wailuku, Maui, T. H.

[Notarial Seal] (s) MANUEL ASUE

A United States Commissioner in and for the Territory and District of Hawaii, and Notary Public, 2nd Judicial Circuit, Territory of Hawaii.

Taken and acknowledged before me, as to said sureties, on this 21st day of December, 1932.

[Seal] (s) THOS. P. CUMMINS
Deputy Clerk, U. S. District Court, District of Hawaii.

The foregoing bond is approved as to form, amount and sufficiency of sureties.

Dated: Honolulu, T. H. this 24th day of December, 1932.

(s) EDWARD K. MASSEE
Judge, United States District Court in and for the District and Territory of Hawaii.

The foregoing bond is approved as to form.

(s) S. B. D. W.

United States District Attorney.

[Endorsed]: Filed Dec. 24, 1932. Wm. F. Thompson, Jr., Clerk. By Thos. P. Cummins, Deputy. [64]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America.—ss.

The President of the United States to the United States of America, and Sanford B. D. Wood, Esquire, its Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City and County of San Francisco, State of California, within thirty days from the date of this Writ, pursuant to an order allowing an appeal, filed in the Clerk's office of the United States District Court for the District and Territory of Hawaii, wherein Dang Nam is appellant and you are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court

of the United States of America, this 21st day of December, 1932.

EDWARD K. MASSEE,
Judge, United States District Court, District and
Territory of Hawaii. [66]

Attest:

[Seal]

WM. F. THOMPSON, JR.,
Clerk, United States District Court.

Received a copy of the within citation.

SANFORD B. D. WOOD,
United States Attorney.

Let the within citation issue.

EDWARD K. MASSEE,
Judge, United States District Court, District and
Territory of Hawaii. [67]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT.

To the Clerk of the above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to-wit:

1. Petition for writ of habeas corpus.
2. Order for issuance of writ of habeas corpus, writ and return of service.

3. Return of James B. Bryan to writ of habeas corpus.

4. Traverse to Return.

5. Decision of Court dismissing writ.

6. Judgment discharging writ of habeas corpus and remanding petitioner, filed December 3, 1932.

7. Petition for appeal.

8. Assignment of Errors.

9. Order Allowing Appeal.

10. Citation on Appeal.

11. All exhibits.

12. All minute entries in the above-entitled cause.

13. This praecipe.

14. Bond for costs on appeal.

15. Clerk's Certificate to Transcript. [69]

Said transcript to be prepared as required by law, and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of said Circuit Court of Appeals at San Francisco, in the State of California, before the day of, 19.....

Dated this 22 day of December, A. D. 1932.

DANG NAM, Petitioner-Appellant,

By (s) E. J. Botts

His Attorney.

[Endorsed]: Filed Dec. 22, 1932. Wm. F. Thompson Jr., Clerk. [70]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL.

The United States of America,
Territory of Hawaii.—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 70 inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office and I further certify that I am attaching hereto the original citation on appeal and that the costs of the foregoing transcript of record are \$32.95 and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said court this 9th day of February, A. D. 1933.

[Seal]

WM. S. THOMPSON, JR.
Clerk, U. S. District Court,
Territory of Hawaii.

[Endorsed]: No. 7302. United States Circuit Court of Appeals for the Ninth Circuit. Dang Nam, Appellant, vs. James B. Bryan, District Director of Immigration, Port of Honolulu, Territory of Hawaii, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed October 3, 1933.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

